

RECEIVED
04 SEP 19 AM 8:57
U.S. BANKRUPTCY COURT
ST. PAUL, MIN

**RESPONSIVE AFFIDAVIT OF
BRADLEY NEWMAN AGAINST
SUMMARY JUDGMENT MOTIONS**

Adv. 04-3086

Bky. 03-38294

STATE OF MINNESOTA)
) ss
COUNTY OF RICE)

2. All the documents and information I have already submitted to the court are true. What I have stated to the court is not only true, but I have a court order from a contested suit against Mr. Hollerud and Hollerud Oil in which the judge found that what I am saying is true. It is too late for Mr. Hollerud and/or Hollerud Oil to come back and try to re-litigate the District Court judgment. It took me months and even years of dealing

with Mr. Hollerud to get my judgment against him. If he wants to fight about whether or not he owes me the money, I would object. We have already had that fight. As I understand the bankruptcy proceedings, the purpose of this hearing is to determine whether or not his debt should be discharged because of the nature of the debt.

Mr. Hollerud knew that he did not have permission to purchase this property from me. He knew that by a contract with Wallace Bustad he was prevented from making any major expenditure without contacting Mr. Bustad. When Mr. Bustad found out what Mr. Hollerud was doing, our deal fell through. As a result, I suffered \$101,500.00 in damages. This was already decided by a prior court.

3. The original dispute revolves around Mr. Hollerud attempting to purchase my gas station in Rose Creek. He attempted to do so by deceiving me and Mr. Bustad.

4. The lease discussions began because Mr. Hollerud thought he could make money selling gas on a retail basis, as opposed to a wholesale basis.

5. I was operating a retail gas station and an automobile servicing center from the same building. The debt against the property was substantial. When Mr. Hollerud offered to buy the station, I saw it as an opportunity to move my automobile servicing center and focus completely on servicing automobiles, retire my debt, and have a little extra money to get my new shop in order.

6. Mr. Hollerud and his father, Art Hollerud, wrote up an agreement for Mr. Hollerud to immediately begin running the station.

7. An agreement was reached that Erik Hollerud and Hollerud Oil would service the debt on the gas station while financing was obtained. When financing was obtained, Mr. Hollerud would pay a purchase price of \$125,000.00, of which \$93,500.00 was the ongoing debt. \$11,000.00 was the existing bill I owed to Hollerud Oil Company, and the remainder would be paid in cash.

8. I signed the agreement written up by Mr. Hollerud and his father. I was led to believe that there would be no problem with the financing.

9. When the deal went bad, I sued Mr. Hollerud in state court. The court found that Mr. Hollerud and I did have a deal to purchase the gas station for \$125,000.00.

10. The court also found that the undertaking was in the name of Hollerud Oil Company and Erik Hollerud. The court also found at that time that Erik Hollerud knew he had no authority to make any major purchase without the consent of Wallace Bustad.

The court further found that Mr. Hollerud had obtained financing through Wells Fargo. The court further found that the reason the deal could not be completed was that Wallace Bustad objected to Erik Hollerud and Hollerud Oil purchasing the gas station because of a clause in the contract between Wallace Bustad and Erik Hollerud, which said that Erik Hollerud was not to make any major purchases without Wallace Bustad's permission. The court also found that both Erik Hollerud and Art Hollerud knew that the proposed purchase of the gas station could not be finalized without the permission of Wallace Bustad. The court also found that neither Erik Hollerud nor Art Hollerud told Wallace Bustad about the proposed purchase, nor did they tell me about the limitations placed upon the purchase of the gas station.

11. It was not generally known around Rose Creek that Wallace Bustad was involved in Hollerud Oil as a silent partner. What I discovered after the deal fell apart was that Art Hollerud and Erik Hollerud had worked together in both a sale of Hollerud Oil and the purchase of my gas station.

What I learned from Wallace Bustad is that Wallace Bustad hired Art Hollerud, as a realtor, to sell some property for him. Art Hollerud, apparently knowing that Wallace Bustad was going to come into a substantial amount of money, convinced Wallace Bustad to purchase a one-half interest in Hollerud Oil as a silent partner. That one-half interest was Art Hollerud's interest in Hollerud Oil. Art Hollerud then wrote up the contract for the sale of one-half of his business to Wallace Bustad, thereby giving Erik Hollerud complete control over Hollerud Oil.

Then, in violation of the agreement with Wallace Bustad, Art Hollerud and Erik Hollerud came to me and wanted to purchase the gas station.

12. We did jointly try to work with Rose Creek Bank to obtain financing.

13. My understanding is that Mr. Hollerud was qualified for financing at Wells Fargo Bank in Austin.

14. Somehow, it came to the attention of Wallace Bustad that Erik Hollerud was attempting to buy the station. I believe Mr. Bustad, if called to testify, will inform the court that at this time he had had enough of Mr. Hollerud's financial shenanigans. I believe he will testify that he made a demand that Mr. Hollerud buy him out. Sometime shortly after making the agreement with Mr. Bustad for purchase of his interest, Mr. Hollerud defaulted on his obligations to Mr. Bustad, and a judgment was entered against Mr. Hollerud for approximately \$125,000.00.

15. Since I initiated my original lawsuit in state court, I have learned from Mr.

Bustad that Mr. Hollerud was completely irresponsible in his dealings with Mr. Bustad. He began taking the profits from his business and was buying expensive personal items, such as trucks, ATV's, and vacations.

16. By the time the money was due on my gas station, around May 31, 2001, it was clear that Mr. Hollerud had perpetrated a fraud on me and Mr. Bustad. It was clear that there was no way that Mr. Hollerud could purchase the gas station. He could not do so until he cleared it with Mr. Bustad. The gas station was in total disrepair. The state court found that the amount of damage to the property and the cost to restore it to its original condition would be about \$40,000.00. Mr. Hollerud was selling the inventory without replenishing it. It was clear to me that the only thing Mr. Hollerud wanted to do was try to skim profits for as long as possible. I had no way of knowing if he even had the financial resources to pay the existing debts against the property. Because these debts were secured with a lien against my homestead, I did not want to take the chance that Mr. Hollerud would continue with his financial scheming and make me lose my house.

17. I asked Mr. Hollerud to come up with the money to purchase the gas station, as we agreed. He could not do it. At that point, I told him that our agreement was off.

18. At that point, the gas station was worth substantially less than when Mr. Hollerud took it over. I had been running a gas station and a servicing station. Mr. Hollerud intended to convert it to a convenience store and gas station. When I took the property over, it was not fit for either a convenience store or an automobile servicing center. My client base had been damaged because many of my customers came to get gas and get their cars serviced. When I moved my servicing operation to my home, many of those people got their gas elsewhere. I attempted to cash flow the gas station, but was unable to do so. As a result, I had no choice but to shut down the gas station and place the station up for sale. It finally sold for \$52,000.00, or about \$70,000.00 less than our agreed purchase price.

19. Mr. Hollerud says that my assertion of great economic loss is "dubious". I do not know how it can be dubious when I have had the Hon. Fred Wellman of Mower County District Court make a finding that Mr. Hollerud and Hollerud Oil both owe me \$101,500.00. Mr. Hollerud had every chance to fight this claim. He had an attorney. He filed an Answer in state court saying that he was not responsible. I had to spend a substantial amount of time and money on an attorney.

The final conclusion of the court was that Mr. Hollerud entered into an agreement with me that he knew he could not fulfill because he had signed a contract saying that he would not do the very thing that he did – try to make a major expenditure without talking to Wallace Bustad. I am convinced that Mr. Hollerud eventually gave up on the lawsuit


because he knew that he was going to lose. I also am firmly convinced that Mr. Hollerud gave up on the lawsuit knowing that it was his intention to file bankruptcy. Mr. Hollerud intentionally concealed the fact that he was not authorized to purchase my gas station. He had to have known that if Mr. Bustad found out what was happening, Mr. Bustad would have said something. Frankly, I would not be surprised that it was Mr. Hollerud's intention from the beginning to defraud either me or the bank, depending on who would give him financing.

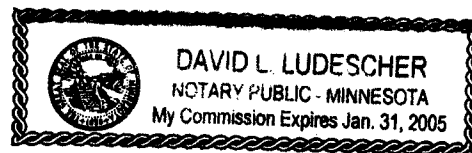
20. Had Mr. Hollerud been able to obtain financing, the banks were the ones who would have been deceived and suffered the loss. Had Mr. Hollerud been honest with me from the beginning, I would never have entered into the agreement. Had he been honest with me, I would probably still be running the gas station and making a living. Had I known that Art Hollerud "tricked" Wallace Bustad into buying a one-half interest in Hollerud Oil, and that he was now writing up the contract to purchase my gas station, I would never have even sat at the same table with him. An honest man who makes bad decisions deserves to have his debts forgiven and receive a chance to start over again. But, a dishonest man should not be able to run to the bankruptcy court and hide from the damage he has caused. Financially, Mr. Hollerud had brought me to the brink of bankruptcy myself. I have chased him for years, trying to make him own up to his responsibility. I chased him in person. I chased him through the state courts. I have chased him through bankruptcy court. And I have now chased him through what I think is the last place for him to hide. He does not deserve to be discharged. I still have those liens against my house; I was almost financially ruined.

FURTHER YOUR AFFIANT SAITH NOT.


Bradley Newman

Subscribed and sworn to before me this
9 day of September, 2004.


Notary Public

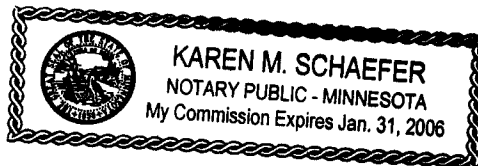


STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

Carmen Tollefson, of the City of Kenyon, County of Goodhue, State of Minnesota,
being duly sworn, says that on Sept. 13, 2004, she served the annexed:

Cammie Tolleson

Kenneth B. ...
Notary Public



September 13, 2004

U. S. Bankruptcy Court
U. S. Courthouse, Room 200
316 North Robert Street
St. Paul, Minnesota 55101

RE: *Erik Michael Hollerud and Hollerud Oil Company*
Bankruptcy Petition #03-38294
Adv. 04-3086

Dear Sir or Madam:

Enclosed herewith for filing in this matter please find AFFIDAVIT OF BRADLEY
NEWMAN AGAINST SUMMARY JUDGMENT, together with Affidavit of Service
by U. S. Mail. Thank you.

Sincerely,



David L. Ludescher

Enclosure

cc: Bradley Newman
Attorney Mark C. Halverson